

R E M A R K S

Claims 1-10 remain in this Application for consideration. It is submitted that all of the claims are allowable as the §112 objections raised by the examiner have all been addressed and the prior art relied upon is clearly not applicable as it is not early enough to constitute prior art. These points are explained in greater detail below.

Referring first of all to the objections to the Specification in paragraph 19, the changes requested by the examiner have been made.

The informalities in Claim 9 have also been addressed by adopting the examiner's suggested change.

The assistance of the examiner in calling the above formal matters to the attention of applicant is acknowledged with appreciation.

Turning now to the §112 rejections, these will be addressed in claim order.

Claim 1 has been amended to provide proper antecedent basis in the preamble for the terms "the bottom" and "the total mass".

In Claims 2 and 9 the preamble has been amended to provide antecedent basis for the term "the shape".

In Claims 3 and 4 "said first portion" has been replaced with "said first component" which is the term used in Claims 1 and 2 from which these claims depend.

In Claim 5 the claim has been amended to delete the word "portion" and substitute "component". Claim language has also been amended to recite a first component and a second component and further has been amended to provide antecedent basis for the terms "the front" and "the rear".

Turning to Claim 6, the claim has been amended to provide antecedent basis for the terms "the bottom", "the other end" and "the total mass". Applicant respectfully traverses the examiner's position that there is a need for an antecedent for "the undercarriage" since this is merely a functional statement and is not structure. This term is no different than the reference in line 3 of Claim 6 where the functional language "including a frame simulating section, an engine simulating section and an exhaust simulating section" is used as a functional modifier for the first component. Accordingly, it is respectfully requested that the objection to Claim 6 under §112 of the statute with reference to the wording "the undercarriage" be withdrawn.

Turning to Claim 7, this claim has been amended to provide antecedent basis for the term "the bottom". With regard to the term "the shape" applicants comments above with regard to the phrase "the undercarriage" in claim 6 are equally applicable here. The term "the shape" is simply a modifier of "weight" and thus is not a separate structural element, nor is it a separate method step. Accordingly, no antecedent is required for "the shape" and the examiner's rejection based on use of this phrase is respectfully traversed. It is requested that the rejection under §112 should now be withdrawn with respect to Claim 7.

With regard to the claim rejections under §112, the sole basis for this rejection is the examiner's investigation of applicant's website and a query to the website web.archive.org. As

confirmed by the accompanying declarations of Jeffrey Thompson and Timothy Harryman, the information which the examiner obtained from web.archive.org is inaccurate and incorrect. Applicant's invention was not publicly disclosed until September of 2003 (Thompson Declaration, paragraph 7) and the first sale did not occur until December of 2003. This testimony is corroborated by that of Timothy Harryman who has stated that the graphics for the website were not even completed until September of 2003.

In view of the unequivocal declarations from two different parties, the rejection under §102 of the statute is clearly inappropriate and should be withdrawn.

For the sake of completeness, applicant has reviewed the prior art cited of interest and will briefly discuss same even though it has not been applied to applicant's claims.

The Nielsen reference, No. 3,842,532 discloses a toy vehicle with a weight 24 which can move transversely across the front axle to act as an energy absorber. There is no contemplation of a multiple component weight comprising a simulated automobile undercarriage.

The second Nielsen Patent No. 3,711,989 discloses nothing more than a flat slug adapted to be secured to the underside of a vehicle body. It has no relevance to the invention claimed in the claims of the present application.

The Branch Patent No. 3,621,609 discloses a flat plate which is used to hold the axles in position on a toy car notwithstanding the application of force by a child to the top of the car. There is no provision for multiple components and there is not the slightest suggestion that the weight comprise a simulated automobile undercarriage.

The Perryman reference No. 3,462,878 has nothing to do with weights, but discloses a toy car having a steerable front axle.

Finally, the Fairbairn patent no. 3,280,500 discloses a toy vehicle with a plate-like chassis too enclosing the bottom.

None of the references even remotely suggest a weight comprising a simulated automobile undercarriage having multiple components joined by lines of weakness where one or more of the components can be broken away to vary the total mass of the weight. This is Applicant's claimed invention and in view of the absence of any teaching whatsoever of this, all of the claims in this application are clearly allowable.

A Notice of Allowance is respectfully requested.

Respectfully submitted,

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